

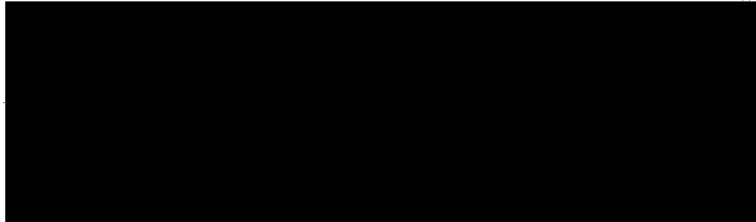


U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: EAC-98-064-50986

Office: Vermont Service Center

Date: AUG 15 2000

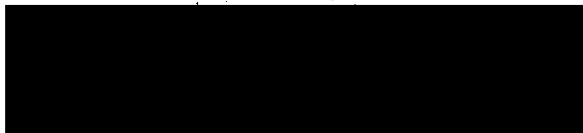
IN RE: Petitioner:



Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



Public Copy

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont Service Center. The petitioner filed a motion to reconsider. The director denied the motion, affirming the findings in his previous decision. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as an associate youth minister. The director denied the petition determining that the petitioner had failed to establish that the prospective occupation is a religious occupation or that the beneficiary had two years of continuous religious work experience. The director also found that the petitioner had failed to establish its ability to pay the proffered wage.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue to be examined is whether the prospective occupation is a religious occupation.

8 C.F.R. 204.5(m) (2) states, in pertinent part, that:

*Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The petitioner provided a description of the beneficiary's duties:

To teach and disciple students in the [REDACTED]  
[REDACTED] Developing the newly save young people in the church through group Bible Study and one on one meeting. Home visits to the families of the young people

that are being taught is an imperative . . . You are to attend Wednesday night youth meetings.

The petitioner further provided the qualifications necessary to work as an associate youth minister:

You must be a member in good standings with [REDACTED] no less than one year. You must be tithing to the church. You must be actively involved with the ministry you intend to work with for six consecutive months prior to being offered position. You must have taken the [REDACTED] You must be attending all [REDACTED] services. Actively involved in accredited [REDACTED]

The petitioner provided a list of "special training" that the beneficiary had received since March 1994. The petitioner also submitted photocopies of several certificates of completion awarded to the beneficiary.

On motion, the petitioner submitted a "full breakdown of duties and responsibilities" which listed the beneficiary's prospective duties as follows:

Conducts weekly youth meetings, youth events and services/prayer meetings. Conducts youth discipleship, follow-ups through visitations. Conducts street ministry. Conducts visitation to Alzeimers [sic] Home, being in charge of the Alzeimers [sic] Ministry, plan activities for Alzeimers [sic]. Conducts discipleship and home visitations to discover peoples' gift in the area of compassion and hospitality training for those gifted in the appropriate area of ministry. Preach in the alter [sic] ministry or prayer meetings. Conducts classes on the distinctive doctrine of the Assemblies of God, particularly Baptism in Holy Ghost.

On appeal, counsel argues that "the past and future duties of the beneficiary establish that they are religious occupation requiring a full-time worker with advanced religious training." Counsel's argument is unpersuasive. Based on the list of proposed duties provided by the petitioner, it appears that any dedicated, devout member of the congregation would be capable of working as an associate youth minister. The petitioner has indicated that the beneficiary completed a number of training courses offered by the church. The petitioner did not, however, provide any description of the contents of these courses. There is no evidence that the courses completed by the beneficiary can be equated to the completion of a formal theological education. Accordingly, the

petitioner has failed to establish that the prospective occupation is a religious occupation.

The next issue to be examined is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on December 27, 1997. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from December 27, 1995 to December 27, 1997.

In its letter dated April 28, 1998, the petitioner stated that the beneficiary "has been serving as Associate Youth Minister since March, 1995, up to the present." As was previously discussed, the duties of an associate youth minister cannot be considered to be duties associated with a religious occupation. As such, the petitioner has not established that the beneficiary was continuously engaged in a religious occupation from December 27, 1995 to December 27, 1997. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

The next issue to be examined is whether the petitioner has the ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner indicated that it will pay the beneficiary an annual salary of \$15,600.00. The petitioner submitted a self-prepared balance sheet dated March 31, 1997. The petitioner also submitted the financial statement for the General Council of the Assemblies of God and Affiliated Entities for the year ended March 31, 1997.

On appeal, counsel argues that the petitioner has the ability to pay the proffered wage. The petitioner submits photocopies of pay statements issued to the beneficiary. The evidence submitted in support of this petition is not sufficient. 8 C.F.R. 204.5(g)(2) provides a list of documents that may be submitted to support a petitioner's claim to be able to pay a wage. While the petitioner did submit an audited financial statement for the General Council of the [REDACTED] there is no evidence that the beneficiary's salary would be paid by the General Council. The petitioner has not submitted any evidence that it has the ability to pay the proffered wage. Accordingly, the petitioner has not established its ability to pay the proffered wage in accordance with 8 C.F.R. 204.5(g)(2).

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.